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Attorneys for Plaintiff and Counter-Defendant  
Wells Fargo Bank, N.A., as Trustee for the Clara Poppic Trust

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A., as  
TRUSTEE for the CLARA POPPIC  
TRUST,

Plaintiff,

v.

KENNETH G. RENZ; ESTATE OF  
JACKSON R. DENNISON; ESTATE  
OF WILEY UMSTEAD; KAZUKO  
UMSTEAD; WON JAE YI aka  
MICHAEL YI; NAN Y. PARK; GUAN  
HUANG; YING ZHANG and SUI  
SONG,

Defendants.

AND RELATED COUNTER-CLAIM

Case No.: CV 08 2561 SBA

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
LEAVE TO FILE A SECOND  
AMENDED COMPLAINT**

New Date: November 4, 2008  
Time: 1:00 p.m.  
Location: Courtroom 3

The motion of Plaintiff Wells Fargo Bank, N.A., as Trustee of the Clara Poppic Trust ("Plaintiff") for leave to file a second amended complaint pursuant to Fed. R. Civ. P. 15(a)(2) came on for hearing before this Court, Thomas F. Vandenburg, Esq. appearing for Plaintiff.


1 Leave to amend should freely be granted when justice so requires.  
 2 Fed. R. Civ. P. 15(a)(2). As Plaintiff's ninety-day notice and waiting period has  
 3 expired, addition of this claim is proper. *Zands v. Nelson*, 779 F.Supp. 1254, 1259  
 4 (S.D. Cal. 1991). The support for the addition of the breach of contract and  
 5 contractual indemnity claims is demonstrated in *Universal Paragon Corp. v.*  
 6 *Ingersoll-Rand Co.*, 2007 U.S. Dist. LEXIS 14530, 27 (N.D. Cal. Feb. 13, 2007).  
 7 As a party may only seek CERCLA contribution from other liable parties after  
 8 having been sued under CERCLA § 106 or § 107(a), the motion to amend to add a  
 9 CERCLA § 113(f) claim is also proper. *Cooper Indus., Inc. v. Aviall Servs., Inc.*,  
 10 543 U.S. 157, 161 (2004).

11 After consideration of the briefs and arguments of counsel, and all  
 12 other matters presented to the Court,

13 **IT IS HEREBY ORDERED:**

- 14 1. Plaintiff's motion for leave to file a second amended complaint is  
 15 GRANTED;
- 16 2. The already named and appearing defendants, KENNETH G. RENZ,  
 17 ESTATE OF JACKSON R. DENNISON, KAZUKO UMSTEAD,  
 18 GUAN HUANG, and WON JAE YI shall be required to respond to  
 19 the Second Amended Complaint within twenty days of the date the  
 20 Second Amended Complaint is filed.

21  
 22 DATED: 11/7/08

23   
 24 The Honorable Sandra B. Armstrong  
 25 United States District Judge  
 26  
 27  
 28